

**IN THE EMPLOYMENT COURT OF NEW ZEALAND
AUCKLAND**

**I TE KŌTI TAKE MAHI O AOTEAROA
TĀMAKI MAKĀURAU**

**[2023] NZEmpC 38
EMPC 394/2021**

IN THE MATTER OF an application for judicial review

AND IN THE MATTER OF an application for a stay

BETWEEN ALLAN HALSE
Applicant

AND EMPLOYMENT RELATIONS
AUTHORITY
First Respondent

AND RANGIURA TRUST BOARD
Second Respondent

AND CULTURES SAFE NZ LIMITED (IN
LIQUIDATION)
Third Respondent

Hearing: On the papers

Appearances: A Halse, applicant in person
D Harris, counsel for first Respondent
S Hood, counsel for second Respondent
No appearance for third Respondent

Judgment: 15 March 2023

**JUDGMENT OF JUDGE K G SMITH
(Application for a stay pending judicial review)**

[1] On 13 September 2022 Allan Halse’s application seeking to review determinations and other decisions by the Employment Relations Authority was struck out on the application of the second respondent, Rangiura Trust Board.¹

[2] The judgment reserved costs arising from the proceeding and timetabled an exchange of submissions to deal with them. Initially Rangiura applied for costs but subsequently withdrew its application.

[3] The Authority limited its participation in the proceeding to filing an appearance stating that it would abide the decision of the Court while reserving certain of its rights.

[4] After Mr Halse’s application for judicial review was dismissed, he applied for what was described in his application as a stay of the proceeding pending action being taken in the Court of Appeal. It was premised on a claim that a miscarriage of justice had occurred because the Authority did not file a statement of defence and that there was a breach of the New Zealand Bill of Rights Act 1990.

[5] A further aspect of Mr Halse’s stay application was a claim that Rangiura lacked standing to apply to strike out his proceeding because it had not filed a statement of defence.

[6] Rangiura withdrew its application for costs in November 2022. That step raised an issue as to whether Mr Halse’s application for a stay needed to proceed. When no steps were taken by him to seek leave to appeal to the Court of Appeal or to file an application seeking judicial review, a conference was convened to ascertain his intentions about the application for a stay and, if necessary, to make directions to deal with it.

[7] At the conference he stated an intention to continue with the application, taking the view that it was necessary for the proceeding to remain “open” pending resolution of a claim to be filed in the Court of Appeal. He sought an opportunity to file submissions supporting his application which he has now done.

¹ *Halse v Employment Relations Authority* [2022] NZEmpC 167.

[8] At the conference counsel for the Authority maintained the stance taken during the proceeding of abiding the Court's decision. Rangiura also advised it would abide the Court's decision.

[9] It is sufficient for this decision to briefly summarise Mr Halse's submissions in support of his application for a stay. His claim is that there was a mistake in law arising from the Authority not filing a statement of defence to his claim and participating in the proceeding where he sought to review its decisions. He derived that view from reading together ss 10(1) and 14 of the Judicial Review Procedure Act 2016. An allied submission was that under s 27 of the New Zealand Bill of Rights Act 1990 he had "a fundamental right to have the Authority turn up in Court and defend its decision".

[10] Mr Halse's submissions also took issue with the fact that the application seeking to strike out his judicial review proceeding was made by Rangiura and not the Authority. That submission was supplemented by an argument that it was Crown Law's responsibility to defend the Authority and not for that task to fall to Rangiura. His submissions did not otherwise explain why a stay was necessary.

[11] The application for a stay of proceedings faces two hurdles. The first one is that the purpose of a stay is to preserve the position of the parties, so far as is possible, pending a successful appeal or review of the judgment in question. When Mr Halse's judicial review proceeding was struck out the only issue that remained to be resolved was costs. Once Rangiura withdrew its application for costs there was nothing further to decide. There were no ongoing consequences arising from the judgment requiring the positions of the parties to be preserved in some way until the anticipated proceeding in the Court of Appeal is resolved. There is nothing to stay.

[12] The second hurdle lies in Mr Halse's response to the Authority's notice of appearance it filed in the proceeding. His application for a stay wrongly stated that the Authority's request to be excused from further attendances was granted "on the papers".

[13] At a conference on 8 February 2022 the first agenda item was the Authority's request, contained in the notice of appearance and accompanying counsel's memorandum, to be excused from further participation in the proceeding.

[14] The conference was attended by counsel for the Authority, Mr Halse and counsel for Rangiuira. All parties to the proceeding, including Mr Halse, consented to the Authority's application and it was granted. That outcome was recorded in the minute of that conference issued on 8 February 2022.

[15] If a stay could be granted I would not make such an order. It would not be in the interests of justice to grant a stay to enable Mr Halse to pursue an argument that the Authority should have participated more fully in the proceeding when he consented to the limited role it took.

Conclusion

[16] The application for a stay is unsuccessful and it is dismissed.

[17] There is no order as to costs.

K G Smith
Judge

Judgment signed at 10.30 am on 15 March 2023